IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4416 OF 2005

Ratilal Govindji Mistry (Chotalia) & ors).. Petitioners

Versus

Mrs.Islam Wd/o Salamudin & ors.).. Respondents

Mr.Rajesh Jain for the Petitioners.

Mr.Ketan Chokani for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH AUGUST 2005

P.C.:

. This Petition challenges the order dated 24th December 2004 passed in Interim Notice No.2584 of 2004 by the Appellate Court of the Small Causes at Bombay (Bandra Branch). By this order, the Appellate Court has directed that the Respondents, who are the Appellants, should deposit the rent uptodate at the rate of Rs.180/- per month. In addition to this, the Appellants were directed to deposit the accruing rent from January 2005 onwards by and before 15th of each month and to continue to deposit the same till the Appeal is disposed of. Stay of the execution of the trial Court's order has been granted on these terms. The trial Court has also granted payment of Rs.500/- per month towards mesne profits. The learned Advocate for the Petitioners relies on the judgment of the Apex Court in the case of *M/s.Atma Ram Properties (P) Ltd.* vs. *M/s.Federal Motors Pvt. Ltd.*, **2005 (1) ALL**

INDIA RENT CONTROL JOURNAL, 23, to submit that this being a money decree, though possession need not be disturbed while the Appeal is being heard, the Appellate Court ought to have directed the Respondents to deposit the mesne profits as well.

2. The Apex Court has held in the aforesaid judgmentthat clause (c) of sub-rule (3) of Rule 5 of Order 41 mandates security being furnished by the applicant for the due performance of the decree or order as may ultimately be passed, as a condition precedent to an order staying the decree. The Apex Court has also observed that this is not the only condition which the Appellate Court can impose. The Apex Court has further held that the power to grant stay is discretionary and flows from the jurisdiction conferred on an Appellate Court which is equitable in nature. Depending on the facts and circumstances of a given case the Appellate Court, while passing an order of stay, may put the parties to such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal.

3. In the present case, the Respondents have been directed to deposit the compensation every month at the rate directed by the trial Court. Future rent or accrued rent has also been directed to be deposited. The Appellate Court has found that these conditions are sufficient preconditions for staying the execution of the

decree. I see no reason to interfere with this discretionary order. Hence, Petition rejected.